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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ELVIRA A.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D042638

(San Diego County
Super. Ct. No. NJ11787E)

Petition for writ of mandate following reference to a Welfare and Institutions Code section 366.26 hearing. Michael Imhoff, Juvenile Court Referee. Petition denied.

Elvira A. (the mother) seeks review of juvenile court orders denying her reunification services and setting a hearing under Welfare and Institutions Code section

366.26.¹ She contends the court erred in finding it was not in her child, Alejandro's,² best interests to provide her with reunification services and there was insufficient evidence for the court to make a determination on the likelihood of successful reunification. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

The father, Ruben A. (the father) and the mother's two older children, Ruben and Janet A., were first declared dependents of the court in 2000, based on the father's severe physical abuse of Ruben, including causing two rib fractures and a femur fracture. The father was ordered to have no contact with the children. Priscilla was born in December 2000 and subsequently declared a dependent child and removed from the parents. The mother's case plan required her to participate in domestic violence treatment, parenting education and individual therapy. On October 10, 2001, the court found she had made good progress and placed Ruben and Janet with her. On January 8, 2002, it gave the social worker discretion to place Priscilla with mother for a 60-day visit. The mother's updated case plan required her to continue with a domestic violence program, individual counseling and a family preservation program. After 18 months of counseling, however, her therapist said she could no longer continue because the mother was dishonest in therapy. The mother experienced some delay in finding another Spanish-speaking

¹ All statutory references are to the Welfare and Institutions Code.

² Alejandro is also called Eduardo in the court records.

therapist. She was asked to continue in a domestic violence program because after 52 weeks of treatment, domestic violence issues still remained.

On June 12 and 13, 2002, the San Diego County Health and Human Services Agency (the Agency) filed supplemental petitions on behalf of Ruben, Janet and Priscilla, alleging the mother allowed the father to have contact with them without the social worker's authorization. At the time, the mother was living with the maternal grandmother and the father would come to the home early in the morning. The grandmother saw the father holding Priscilla in a rough manner and asked the mother to leave. The mother took the children and refused to give the social worker her new address. The court sustained the supplemental petitions and removed the children from the mother's custody, terminated reunification services and set a section 366.26 hearing. On February 7, 2003, it terminated the parents' rights to Janet, Ruben and Priscilla and referred them for adoptive placement.

Alejandro was born in October 2002. His birth was concealed from the Agency. On May 30, 2003, it was reported that the parents had been arguing for two days and the mother had taken Alejandro and refused to tell the father where he was. It was also reported that the parents had lied to relatives and to the Agency about Alejandro's birth. When the social worker went to the maternal grandmother's home, a maternal aunt told her a baby she saw there was the mother's child, Alejandro. The social worker took him into protective custody. The mother denied being Alejandro's mother and claimed he was a child of the maternal aunt. The father was arrested on outstanding warrants. He said he

and the mother had been in a violent argument and she had scratched him all over. He confirmed that Alejandro was his and the mother's child.

On June 4, 2003, the Agency petitioned on Alejandro's behalf under section 300, subdivisions (a) and (j), alleging he was at substantial risk of serious physical harm because of the father's physical abuse of Ruben and the parents' failure to successfully reunite with Ruben, Janet and Priscilla. The petition also alleged Alejandro was at risk from exposure to violent confrontations between the mother and the father.

At the detention hearing, the court detained Alejandro in the paternal grandfather's home, where the three older children were living. The social worker reported the mother had received more than 19 months of services in her previous case, but had gone back to living with the father. She recommended no reunification services. In a later report dated July 31, 2003, the social worker reported the mother said she was living with the father when Alejandro was born, but then left Alejandro in the maternal aunt's care. She said she did not want to live with the father, but he insisted. She told the social worker she would divorce him, but later said she wanted to try to work things out with him if he could change. She denied hitting and scratching him. The mother said she had not participated in any domestic violence or therapy programs since losing her rights to her older children. The social worker opined the mother's history showed she would allow the father to have contact with the children after promising she would protect them from him.

At the jurisdictional/dispositional hearing on July 31, the court found the allegations of the petition true by clear and convincing evidence. For the disposition

hearing, the social worker testified the mother had visited Alejandro each week and had attended about three therapy sessions, but she did not know if she was in a domestic violence program. The social worker questioned the mother's credibility and whether she could protect the children from the father. She opined it would not be in Alejandro's best interests to provide services to the mother.

The court declared Alejandro a dependent, removed him from parental custody and placed him with a relative. It ordered no services for the mother pursuant to section 361.5, subdivision (b)(10) and (11), allowed her continued supervised visitation and set a section 366.26 hearing.

The mother petitions for review of the court's orders. (§366.26 subd. (l); Cal. Rules of Court, rule 39.1B.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

I

The mother contends the court erred in finding it would not be in Alejandro's best interests to provide her with reunification services under sections 361.5, subdivision (b)(10) and (11).

A. Standard of Review

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable

to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

B. Analysis

Section 361.5, subdivision (b)(10) provides services need not be provided when the court finds by clear and convincing evidence:

"That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian."

Section 361.5, subdivision (b)(11) provides services need not be provided when the court finds by clear and convincing evidence:

"That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent."

Section 361.5, subdivision (c) provides a court shall not order reunification services for a parent described in subdivision (b)(10) and (11), unless it finds by clear and convincing evidence that reunification services are in the child's best interests.

The mother argues she made reasonable efforts to treat the problems that led to the removal of Alejandro's siblings, including enrolling and participating in and completing a parenting class, a domestic violence class and 18 months of counseling. She also argues she recently enrolled in a new parenting class and counseling and was participating with a domestic violence advocate in the community.

The mother, however, appeared not to have benefited from the services she had received. The children were removed because of the father's severe abuse of Ruben. The mother participated in services and the children were returned. But within a few months they were removed again and the Agency petitioned under section 387, alleging the mother allowed the father unauthorized contact with the children and she moved without informing the social worker where she and the children had gone. Her parental rights were terminated.

At the time of the hearing regarding Alejandro, the same problems remained. The court found he was at substantial risk because of the father's abuse of Ruben and the parents' domestic violence. The father had not participated in reunification services and had no treatment. The mother had completed 52 weeks of domestic violence treatment and had participated in therapy and in-home services, yet she continued a relationship with the father. She became pregnant with Alejandro while receiving services. She hid her pregnancy and then attempted to hide Alejandro's birth so that he would not be removed from her custody. The evidence showed she was not able to protect Alejandro and had not made reasonable efforts to remedy the problems that led to the removal of his

siblings. The court did not err in finding it was not in Alejandro's best interests to provide her with reunification services.

II

The mother asserts the court erred in denying her reunification services because the Agency did not adequately investigate whether there were circumstances that indicated reunification was likely to be successful or unsuccessful as required by section 361.5, subdivision (c). She complains the social worker focused on the risk from the father and did not speak with the mother's current counselor or discuss the case with her former service providers.

Section 361.5, subdivision (c) provides:

"In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child."

By its terms, this provision applies to cases where the court denies services to a parent under subdivision (b)(5) of section 361.5. Here, the court denied services to the mother under section 361.5, subdivision (b)(10) and (11). In any event, the social worker adequately investigated the likelihood of the mother's success in reunification and her past and current participation in services and reported to the court that although the mother had completed extensive services in the past dependency case, she continued to

show that she would place Alejandro at risk. We conclude that the court did not err in denying her reunification services.

DISPOSITION

The petition is denied.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.